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**8. Wills (§ 489 (1), 490\*)—Parol Evidence Admissible to Identify Subject and Object.**—Where a will does not specifically describe land devised, parol evidence is always admissible to identify the land, and also to identify the beneficiary.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 789, et seq.]

Appeal from Circuit Court, Tazewell County.

Suit by George Arthur Payne and another against J. Payne and others. Decree for plaintiffs, and defendants appeal. Affirmed.

*S. M. B. Coulling and Chapman, Peery & Buchanan*, all of Tazewell, for appellants.

*Harman & Pobst*, of Tazewell, for appellees.

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POFF et al. v. POFF et al.

NOLLEY et al. v. SAME

Sept. 16, 1920.

[104 S. E. 719.]

**1. Appeal and Error (§ 333\*)—No Abatement in Appellate Court Because of Death after Appeal or Allowance of Writ of Error.**—Where an appeal is allowed, or writ of error awarded, before death of party, the case is from that moment a case pending in the appellate court, and, under Code 1887 and Code 1904, § 3307, Code 1919, § 6167, there is no abatement in the appellate court because of the death, the statute effecting no other change in the procedure than that it expressly leaves it to the discretion of the appellate court, where the death is made known to such court and is suggested on its record, to proceed with the case and enter decree as if such death had not occurred.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 529.]

**2. Appeal and Error (§ 374 (2)\*)—Bond Need Not Be Filed as to Estate of Party Dying after Taking of Appeal.**—Under Code 1919, §§ 6351-6355, where a party takes an appeal, and thereafter dies before the expiration of the statutory period within which an appeal bond would have been given had he lived, the continued pendency of the appeal is unquestionably necessary to protect his estate after his death, and the case falls within the provision which exempts cases involving the estates of decedents from the need of the giving of an appeal bond.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 516, et seq.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**3. Descent and Distribution (§ 99\*)—Gift by Will Held Advancement Under Statute Relating to Hotchpot.**—A gift of land to children under a will held an advancement which must be brought into hotchpot as a condition entitling such children to participate in distribution of intestate estate, under Code 1919, § 5278.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 191.]

**4. Descent and Distribution (§ 93, 115\*)—Doctrine of Advancement Applicable Only to Intestate Estate.**—The doctrine of advancement is applicable only to the portion of a donor's estate of which he dies intestate, and as to such estate, in the absence of statute prescribing in what manner the intention on the subject shall be expressed, where the gift is substantial in amount, the law attaches the presumption to every gift of an ancestor to a decedent that it is a gift by way of advancement, and this presumption is one of law and is based upon the supposed intention or desire of the ancestor that any inequalities in the division of his whole estate among his heirs at law and distributees shall be corrected as far as practicable.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 192, et seq.]

**5. Descent and Distribution (§ 115\*)—Presumption that Gift Is Advancement May Be Rebutted.**—The presumption that a gift to a child is an advancement may be rebutted by affirmative proof that the gift was not intended to be a gift by way of advancement.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 191.]

**6. Descent and Distribution (§ 115\*)—Clause in Will Held Not to Rebut Presumption of Advancement.**—A clause in a will: "I have other property that I do not attempt to dispose of in this will concerning the farm. I may some time in the future make a will as to the residue of my estate or I may dispose of it in my lifetime, or I may die intestate as to said residue"—does not furnish any affirmative proof that would rebut the presumption that the gift of the farm was intended to be an advancement.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 191, et seq.]

**7. Assignments (§ 52\*)—Instructing Debtor to Pay Debt to Third Person Held Attempted Oral Equitable Assignment of Chose in Action.**—Where creditor told debtor orally to pay the debt to a certain third person, which the debtor agreed to do, there was but an attempted oral equitable assignment of a chose in action.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 762, et seq.]

**8. Assignments (§ 31\*)—Essentials of Assignment of Chose in Action Stated.**—An assignment of a chose in action must be executed

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

in order to be valid, and there must be an instrument and delivery, but the delivery of the instrument need not be actual, but may be symbolical, where the chose in action is an existing debt of which there is no documentary evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 760, et seq.]

**9. Gifts (§ 18 (1)\*)—Rule as to Declaration of Trust Inapplicable to Attempted Oral Assignment of Chose in Action.**—The rule that gifts by way of a declaration of trust are upheld as executed gifts does not apply to attempted gifts of choses in action which are not effectual because of a lack of symbolical delivery.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 721, et seq.]

**10. Courts (§ 90 (1)\*)—Long-Established Rules Not Changed.**—Courts are without power to change long-established rules of law, even though injustice may result.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 720, et seq.]

Appeal from Circuit Court, Montgomery County.

Suit by Poff and others against Poff, Mrs. Nolley and others. From the decree, both parties appeal. Affirmed.

*Staples & Cocke*, of Roanoke, and *M. H. Tompkins*, of Christiansburg, for appellants.

*Hall, Wingfield & Apperson*, of Roanoke, and *Harless & Colhoun*, of Christiansburg, for appellees.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.